

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Creation of A Low Power Radio Service) MM Docket No. 99-25
)
)

To: The Secretary
Attention: The Commission
ELECTRONIC FILING

**COMMENTS OF SAGA COMMUNICATIONS, INC. ON
SECOND FURTHER NOTICE OF PROPOSED RULEMAKING**

Saga Communications, Inc. ("Saga"),¹ by its counsel, and pursuant to Sections 1.415 and 1.419 of the Commission's Rules, electronically files these Comments on the Commission's Second Further Notice of Proposed Rulemaking ("SFNPRM"), *Creation of a Low Power Radio Service* ("SFNPRM"), 73 Fed. Reg. 12061, published March 6, 2008.² The Commission, in *Creation of Low Power Radio Service* ("Report and Order"), 15 FCC Rcd 2205 (2000), authorized the low power FM ("LPFM") service. The "order" portion of the SFNPRM adjusts the rules governing minor changes and technical minor amendments for LPFM stations.³ In the "notice" portion of the SFNPRM, the Commission seeks comment on technical and ownership issues related to LPFM. Saga herein limits its Comments to technical issues raised in the SFNPRM. In sum, the proposals put forth by the Commission could do great damage to existing

¹ Saga Communications, Inc. is a broadcasting company, the stock of which is publicly-traded, whose business is devoted to acquiring, developing and operating broadcast properties. The company owns or operates broadcast properties in 26 markets, including 60 FM and 30 AM radio stations, state radio networks, farm radio networks, television stations and low-power television stations and FM translator stations.

² The deadline for filing comments is April 7, 2008, so these Comments are timely filed.

³ See *Creation of a Low Power Radio Service*, 73 Fed. Reg. 3202, published January 17, 2008 ("*Third Report and Order*"). The rules are now in effect.

commercial FM service, notwithstanding the Commission's contrary belief.

As Saga pointed out in earlier Comments⁴ in this proceeding, the United States has enjoyed a robust independent commercial broadcasting service, which has been an effective tool for communicating not only entertainment, but critical information during emergencies as well as other programs designed to meet the needs and interests of the stations' communities. This has come about, in large part, because listeners could hear a clear signal when they tuned in to their local stations. Now, with the emergence of competing audio content providers like satellite broadcasting and so-called internet "pod-casting," it is vitally important that the Commission continue to protect the signals of traditional commercial radio stations. With threats of terrorism and natural calamities requiring the deployment of the Emergency Alert System, the public interest demands that stations can be received clearly. LPFM stations have just enough power to completely disrupt listening patterns because, for example, listeners in cars will "tune out" when they pass through an interference area. "Tune-outs" directly affect station revenue, which directly affects the ability of commercial broadcasters to remain in business and provide the public service they are required to do.

With the above as background, Saga, *inter alia*, urges the Commission (1) not to treat LPFM applications as having primary status with respect to prior filed FM translator applications; and (2) not to permit an LPFM station to continue to operate when interference is predicted to occur within the 70 dB μ contour of a subsequently-authorized second- or third-adjacent channel full service FM station. Unless the Commission can guarantee that its enforcement capability is adequate to promptly shut down interfering LPFM stations that cause interference to full-service stations, the Commission must not relax its rules regarding LPFM

⁴ See Saga's Comments filed August 22, 2005.

stations and interference standards.

Saga responds *seriatim* to the matters on which the Commission seeks comment.

A. Section 73.807 Second-Adjacent Channel Waiver Standard

The *Third Report and Order* describes an interim processing policy that the Commission will use to consider Section 73.807 of the Rules waiver requests from certain LPFM stations. When implementation of a full-service station community of license modification would result in an increase in interference caused to the LPFM station or its displacement, the LPFM station may seek a second-adjacent channel short spacing waiver in connection with an application proposing operations on a new channel. The Commission seeks comment on whether to codify the waiver and processing policies set forth in the *Third Report and Order*.

Modifications to these policies would not better balance the interests of LPFM and full-service stations. The policy should not be changed. Waivers should be granted only when the LPFM station can demonstrate no actual interference due to lack of population, terrain, or other factors, as the Commission allows in the FM translator service. Continued LPFM operations should be subject to the resolution of all *bona fide* actual interference complaints. So-called “encroaching” full-service stations should not be responsible for providing technical assistance and assuming financial responsibility for expenses associated with resolving all *bona fide* actual interference complaints. It is imperative that the Commission not alter its current policy in this area, and most emphatically, these procedures must not be expanded to include co- and first-adjacent channel situations. No rule changes are warranted.

There is no reason to mandate full-service station cooperation because it is in the station’s self-interest to work with the LPFM station to resolve interference complaints. Saga has “real-world” experience in this area supporting its position. A Saga subsidiary, Saga

Communications of Tuckessee, LLC (“Saga Tuckessee”), is licensee of WEGI(FM), Oak Grove, Kentucky. WEGI is licensed to operate on 94.3 MHz, Channel 232A. The Commission licensed a low power FM Station, WPJI-LP, to operate on 94.5 MHz (See BLL-20040518AAW) before Saga implemented a change of WEGI’s community of license (through rule making).⁵ When WPJI-LP commenced operations, it created intolerable interference to the reception of WEGI. On June 6, 2005, Saga-Tuckessee filed a petition for reconsideration against the grant of WPJI-LP’s license application, alleging that WPJI-LP was causing harmful interference to the reception of WEGI’s signal on a first-adjacent channel. On July 21, 2005, Saga-Tuckessee and the operator of WPLI-LP jointly filed a settlement agreement, under which WPLI-LP filed an application to modify its facilities so as to operate on channel 235 in lieu of channel 233. Although Saga-Tuckessee voluntarily assisted WPLI-LP in this channel change, it was not compelled to do so, as the proposed rules contemplate. This relationship between full-power stations and LPFM stations should not be altered.

B. LPFM Displacement

The Commission has adopted a processing policy to evaluate on a going forward basis each community of license modification proposal that would result in the displacement of an LPFM station or stations. The Commission should not amend Section 73.809 of the Rules to establish a licensing presumption that would protect certain operating LPFM stations from subsequently proposed community of license modifications. Even though the Commission suggests prerequisite local programming minimums before the presumption would be triggered, there is no way to effectively monitor such programming. Since there is no requirement for either LPFM or full-power stations to maintain program logs or maintain recordings of their

⁵ See *Springfield, TN, and Oak Grove, KY*, DA 03-3871, released December 8, 2003 (MB Docket 03-132).

operations, there is no way to verify whether LPFM stations have regularly provided eight hours of locally originated programming daily. Finally, LPFM stations should NOT be protected against subsequently filed petitions for rulemaking for new FM allotments and/or modification applications not proposing community of license changes. LPFM stations should remain secondary services, subject to the priority requirements of full-service stations.

C. Obligations of Full-Service New Station and Modification Applicants to Potentially Impacted LPFM Stations

Currently, a full-service station applicant has no legal obligation to assist an LPFM station potentially impacted by implementation of its new station or modification proposal; and Saga believes this should remain the policy despite the Commission's stated belief that this policy is "inconsistent with the comity and respect to which LPFM stations are **entitled** and with certain reimbursement policies which the Commission has established for full-service stations which are involuntarily required to change channels. [bold added]" Saga strongly opposes affording these entitlements to a service that is for many operators, merely a diversion from their professions and employment. For full-service licensees, this is a serious business, which can support a radio station's employment unit, or result in insolvency or expense cut-backs, and loss of jobs. It is a fact (apparently not fully appreciated by this Commission) that broadcasters must bring in revenue in order to pay ongoing expenses, and in turn, provide employment for their staff members who present programs to serve the public. Currently, margins are diminishing and it is increasingly difficult for radio broadcasters to operate in this financial environment. The Commission would heap insult on injury by requiring an applicant for a new or modified station to assume technical, financial, and notice obligations if implementation of the proposal could impact an LPFM station. The Commission seeks "comment on each of these tentative

conclusions and on other measures to ensure the equitable treatment of LPFM stations,” but apparently cares nothing for the “equitable” treatment of full-service broadcasters.

An unintended consequence of this policy may be the stifling of previously contemplated relocations by full-service stations that would otherwise bring new radio service to currently unserved communities, a lofty goal according to the Commission’s “Localism” proceeding.⁶

D. Contour Protection-Based Licensing Standards for LPFM Stations

The Commission regularly cites the scarcity of resources in enforcing its rules and regulations, relying, in many cases on licensees to truthfully certify and self-regulate.⁷ This scheme works well where full service licensees face the prospect of serious enforcement action if they are caught not being candid with the Commission or violating rules that carry with them the prospect of a significant monetary forfeiture. This is not the case with LPFM licensees. Since they must not be connected with a full-service station, the operators, although often well-intentioned, frequently don’t have the technical expertise or knowledge to comply with the rules. In such cases, the full-power licensees must rely on the enforcement powers of the Commission when an LPFM station creates interference to a full-service station. Where an LPFM station might only lose some listeners if it must shut down temporarily, full-service stations lose revenue when they cannot be received by their listeners. They have contracts with advertisers to deliver an audience and the advertisers expect to have their messages heard on the stations. Therefore, unless and until the Commission can guarantee that its rules will be promptly and efficiently enforced, it must not relax its rules further.

⁶ *Broadcast Localism*, MB Docket No. 04-233, Report on Broadcast Localism and Notice of Proposed Rulemaking, FCC 07-218, released January 24, 2008.

⁷ *Streamlining of Mass Media Applications, Rules, and Processes*, 13 FCC Rcd 11349 (1998).

The SFNPRM notes that an LPFM new station or modification application must protect all existing stations and prior filed applications on the basis of distance separations set forth in Section 73.807 of the Rules. The Commission notes that Prometheus Radio Project (“Prometheus”) and other LPFM advocates argue that the Commission should adopt a more flexible “contour” methodology for the licensing of LPFM stations. The Commission notes that the FM translator technical rules include a second and essential requirement: the inflexible obligation to resolve all *bona fide* actual interference complaints pursuant to Section 74.1203(a) of the Rules. A translator station that cannot resolve all complaints must suspend operations or change modes of operation. This protection works well for FM translator stations that might interfere with a full service station. There is absolutely no reason to eliminate this rule to assist LPFM stations. LPFM operators, due to their unfamiliarity with the FCC’s rules, may not be willing to promptly resolve legitimate complaints of interference. The Commission in effect concedes this since it seeks comment “on whether it is appropriate to license LPFM stations to community groups, which often have limited resources and technical expertise, under a standard that subjects such stations to the constant risk of being forced off the air if they cannot resolve interference complaints promptly [bold added].” This really says it all with respect to LPFM. The already over-worked Enforcement Bureau would have a very difficult time resolving interference complaints if the current standard were relaxed for LPFM. Should the Commission move forward in this area, it is mandatory that it adopt an LPFM technical licensing regime that would require the use of consulting engineers in order to protect the spectrum. Additionally, the Commission must adopt rules that would require the LPFM station to terminate operations upon notice from the affected full-service station and not return to the air until the interference were eliminated.

E. LPFM – FM Translator Protection Priorities

The *Third Report and Order* does not reach a conclusion on the “co-equal” status between LPFM stations and FM translator stations. The Commission seeks comment on (a) whether it should distinguish between translators that are fed by satellite and those that received and retransmit programming delivered terrestrially; (b) the extent to which providing priority to LPFM stations could impact established listening patterns or disrupt established translator signal delivery systems that noncommercial educational (“NCE”) broadcasters rely on extensively to disseminate programming; (c) the Prometheus proposal to limit the number of translator stations that would have priority over subsequently applied for LPFM facilities; and (d) whether such an approach is administratively feasible given the fact that an FM translator may without prior consent or notice to the Commission change its primary station.

Saga urges that no changes be made to the current rules that distinguish between translators that are fed by satellite and those that receive their primary signals over the air. LPFM stations should not receive any priority over FM translator stations. The Prometheus proposal is, as the Commission observes, infeasible.

WHEREFORE, Saga respectfully urges the Commission to act in a manner that will preserve the existing commercial FM radio structure, and not adopt the proposed technical changes in the rules.

Respectfully submitted,

SAGA COMMUNICATIONS, INC.

By: Gary S. Smithwick
Its Attorney

Smithwick & Belendiuk, P.C.
5028 Wisconsin Avenue, NW
Suite 301
Washington, DC 20016
202-363-4560

April 7, 2008